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U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE
ON INTELLIGENCE

WASHINGTON, DC 20515-6415

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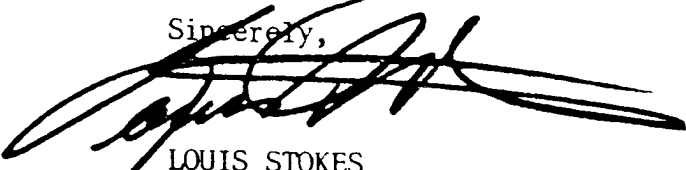
Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D. C. 20515-6348

Dear Mr. Chairman:

On March 9, 1988, Acting Director of Central Intelligence Robert M. Gates submitted to the House a proposed Intelligence Authorization Act for Fiscal Year 1989. Section 601 of that proposal would amend Section 912 of the Internal Revenue Code to provide tax treatment on allowances for certain Department of Defense personnel comparable to that provided to Foreign Service and Central Intelligence Agency employees for similar allowances.

In introducing the Intelligence Authorization Act for Fiscal Year 1989 (H.R. 4387, ordered reported by the Permanent Select Committee on Intelligence on April 14), I did not include this provision, which more properly lies within the jurisdiction of the Committee on Ways and Means. I believe, however, that this proposed change to the Code is a reasonable one and that it deserves consideration by your Committee. I have urged the Director of Central Intelligence to communicate directly with you concerning this proposal and will be happy to appear in support of it before the Committee. I enclose a copy of the provision and an explanation provided by the acting Director of Central Intelligence.

Sincerely,


LOUIS STOKES
Chairman

Enclosures

cc: Director of Central Intelligence

"(2) The term 'foreign intelligence collection activities' means the collection of foreign intelligence or counterintelligence information, and related support activities, by a component of the Department of Defense.

"(3) The term 'intelligence activities' means --

"(A) the collection of foreign intelligence or counterintelligence information;

"(F) the conduct of counterintelligence operations;

"(C) the conduct of covert action;

"(D) support activities; and

"(E) any other intelligence or intelligence-related activity of the United States."

(b)(1) Except as provided by paragraph (2), subchapter II of chapter 21 of title 10, United States Code, as added by subsection (a), shall take effect at the end of the 90-day period beginning on the date of the enactment of this act.

(2) Section 436(a) of such title (relating to regulations) shall take effect on the date of enactment of this Act.

TITLE VI - NSA/DIA PERSONNEL AUTHORITIES IMPROVEMENTS

NSA/DIA Employee Tax Equalization

SEC. 601. Section 912 (1) of chapter 1 of title 26, United States Code, is amended by striking the "or" in paragraph (C) and inserting at the end thereof the following new paragraphs:

"(E) subsection (b) of section 9 of the National Security Agency Act of 1959, as amended (50 U.S.C. §402 note), whenever the allowance would be excluded from gross income under paragraphs (1)(A) or (1)(B) of this section, or

"(F) subsection 1605 (a) of title 10, United States Code, whenever the allowance would be excluded from gross income under paragraph 1(A) of this section."

TITLE VI
NSA/DIA
PERSONNEL AUTHORITIES IMPROVEMENTS

Section 601 would amend section 912(a) of the Internal Revenue Code of 1954 to grant tax treatment of allowances currently provided to certain Department of Defense (DoD) personnel under section 9(b)(1) of the National Security Agency Act of 1959 and section 1605 of title 10, United States Code, comparable with that provided to Foreign Service employees for similar allowances.

The Intelligence Authorization Act of 1982 (Public Law 97-89) amended the National Security Agency Act of 1959 to allow the Director of the National Security Agency to provide allowances and benefits to certain civilian employees of DoD which were comparable to those provided to the Department of State's Foreign Service and to employees of the Central Intelligence Agency. During the implementation of this statute, it was discovered that comparability of the allowances could not be achieved unless the tax exemption provided for Foreign Service and CIA employees under section 912(1)(A) and (B) of the Internal Revenue Code was also available for civilians employed and assigned to the National Security Agency.

The Intelligence Authorization Act for Fiscal Year 1984 (Public Law 98-215) amended title 10, United States Code, to provide certain allowances and benefits to personnel assigned to Defense Attaché Offices and Defense Intelligence Agency (DIA) Liaison Offices overseas comparable to those provided by the Secretary of State to officers and employees of the Foreign Service under chapter 9 of title 1 of the Foreign Service Act of 1980 and the provisions of 5 U.S.C. §5924(4). Although section 1605 was designed to establish equivalence between DAO/DIALO civilians and Foreign Service personnel with respect to many allowances and benefits, the actual value of the allowances and benefits to DAO and DIALO personnel is less than the value of the benefits to Foreign Service personnel, since the benefits granted under the Foreign Service Act are tax-free by virtue of section 912 of the Internal Revenue Code while those granted under section 1605 are not exempt from taxation.

The current inequity in taxation has been compounded by subsection 1232(b) of the Tax Reform Act of 1986 (Public Law 99-514). This subsection provides that civilian employees of DoD stationed in Panama may exclude from gross income allowances which are comparable to allowances excludable under section 912(a) of the Internal Revenue Code by employees of the Department of State stationed in Panama. Thus, it appears that any Defense Intelligence Agency or National Security Agency personnel stationed in Panama will, in future taxable years, be able to exclude from their gross income Foreign Service-equivalent allowances and benefits granted to them.

As a result of the provisions discussed above, there is now a situation where the tax laws treat identical allowances and benefits differently for NSA and DIA civilian personnel stationed overseas, from that of Foreign Service personnel. Moreover, under the Tax Reform Act of 1986, the tax laws now treat identical allowances and benefits differently for NSA and DIA civilian personnel in Panama from all other NSA and DIA civilian personnel stationed overseas. The addition of the proposed paragraphs (E) and (F) to section 912(1) of the Internal Revenue Code of 1954 will provide equal tax treatment for identical allowances and benefits received by NSA, DIA and Foreign Service civilian personnel stationed around the world.

The Congress is mindful of this problem and has indicated a willingness to assist. A provision identical to the amendment sought here was included in S. 1243, the Fiscal Year 1988/89 Intelligence Authorization Act as reported by the Senate Select Committee on Intelligence. During floor action on July 23, 1987, however, SSCI Chairman Boren was compelled to move to strike the provision from S. 1243 on account of a jurisdictional dispute. He indicated, however, that the Congress would be very receptive to the provision in the future (Congressional Record, July 23, 1987, pp. S 10591-92). Section 602 is resubmitted to allow the Congress to proceed in the matter.